

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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**Case No. S-2586**

**PETITION OF DALE RUBENSTEIN, D. V. M. t/a ' A CAT CLINIC'**

OPINION OF THE BOARD

(Resolution Adopted January 21, 2004)

(Effective Date of Resolution: February 6, 2004)

Case No. S-2586, Petition of Dale Rubenstein, D. V. M. t/a 'A Cat Clinic', is an application for a special exception pursuant to Section 59-G-2.32 (Hospital, Veterinary) of the Zoning Ordinance to permit the establishment of a veterinary clinic limited to the treatment of cats. The hours of operation will be between 7 a.m. and 8 p.m., Monday through Friday; and 8 a.m. to 2 p.m. on Saturday (except on the rare occasion when emergency needs dictate otherwise) by appointment only. On weekday mornings, the clinic will employ two (2) doctors, three (3) staff members, one (1) bookkeeper and one (1) office manager. On weekday afternoons, the clinic will employ one (1) doctor and two (2) to three (3) staff members. On Saturdays, the clinic will employ one (1) doctor and two (2) to three (3) staff members. The applicant proposes the installation of a ramp to comply with the Americans with Disabilities act ("ADA"); and cover the entrance and the ramp with a roof and trellis structure.

Pursuant to the authority in Section 59-A-4.125 of the Zoning Ordinance, the Board referred the case to the Hearing Examiner for Montgomery County to conduct the public hearing and submit a report and recommendation to the Board. The Hearing Examiner convened a public hearing on October 29, 2003, closed the record in the case on December 22, 2003, and issued a report and recommendation for approval of the special exception on December 24, 2003.

Decision of the Board:

Special exception approved subject  
to conditions enumerated below.

The Board of Appeals considered the Hearing Examiner's report and recommendation at its Worksession on November 12, 2003. The Board has carefully reviewed the report and recommendation together with the record in the case. The Board finds that it is not necessary to limit the number of cats on site at any one time, with that one exception, **adopts** the Hearing Examiner's report and recommendation subject to the following conditions:

1. The Petitioner shall be bound by all of her testimony and exhibits of record, and by the testimony and representations of counsel identified in this report, including the final site plan, Exhibit 58(a).
2. The Petitioner must submit an application for subdivision review in connection with the proposed structural addition to the main building, in compliance with the requirements of Chapter 50 of the County Code.

3. The hours of operation for the veterinary clinic shall be from 7:00 a.m. to 8:00 p.m. Monday through Friday and 8:00 a.m. to 2:00 p.m. on Saturdays.
4. The practice is limited to cats, and cats must be seen by advance appointment only, except in case of emergency.
5. No animal boarding is permitted; cats may be kept overnight for medical purposes only.
6. The holder of the special exception must keep a written log of all appointments, drop-in visits for purchase of food or other minor activities, and emergency client visits, to be available for inspection by county authorities.
7. The sale of retail products may not occupy more than four percent of the clinic floor space.
8. The detached garage on the subject property must not be used for any purpose related to the veterinary clinic.
9. Signage must be installed to designate the driveway entrance for one-way traffic only, with vehicles to enter via the westernmost curb cut, travel either to the parking area or past the front entrance, and exit from the easternmost curb cut.
10. No more than 10 staff members, including veterinarians, may be on site at one time. During time periods when appointments are scheduled, the maximum number of staff on site at one time, including veterinarians, shall be eight.
11. No more than five appointments shall be scheduled in any one-hour period, and no more than eight surgeries shall be scheduled per day.
12. No more than 10 deliveries shall be received per week, including no more than two deliveries from trucks larger than those that normally deliver to residential dwellings.
13. All security lighting must be turned off or on a motion sensor from 10:00 p.m. to 6:00 a.m.
14. The Petitioner must apply for a variance from the Sign Review Board for her proposed illuminated entrance sign, and must provide to the Board of Appeals a drawing of the final sign as approved.
15. Signage lighting, if approved by the Sign Review Board, must be turned off from 10:00 p.m. to 6:00 a.m.

16. The Petitioner must comply with the stormwater and sediment control regulations of the Montgomery County Department of Permitting Services.
17. The Petitioner must comply with the Tree Save Plan approved for the property, and must have at least one site inspection conducted during the construction process by a Maryland Licensed Tree Expert or ISA Certified Arborist, to observe tree health, insure that the protection area has not been violated, and confirm that the protection measures are in good repair.

On a motion by Allison Ishihara Fultz, seconded by Angelo M. Caputo, with Donna L. Barron, Louise L. Mayer, and Donald H. Spence, Jr., Chairman in agreement the Board adopted the following Resolution:

**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.

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Donald H. Spence, Jr.  
Chairman, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 6<sup>th</sup> day of February, 2004.

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Katherine Freeman  
Executive Secretary to the Board

**NOTE:**

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure.

See Section 59-A-4.53 of the Zoning Ordinance regarding the twenty-four months' period within which the special exception granted by the Board must be exercised.



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## **I. STATEMENT OF THE CASE**

Petition S-2586, filed on July 17, 2003, requests a special exception under the R-200 Zone to operate a veterinary hospital in an existing house located at 14200 Clopper Road in Boyds, Maryland, identified as Parcel P565 on Map EU11.

Technical Staff of the Maryland-National Capital Park & Planning Commission ("M-NCPPC") reviewed the petition and, in a report dated October 20, 2003 recommended *approval*.

By Resolution effective September 16, 2003 the Board of Appeals, acting under the provisions of Code § 59-A-4.125, referred the petition to the Office of Zoning and Administrative Hearings to conduct a public hearing and submit a report and recommendation. See Ex. 20. A public hearing was convened on October 29, 2003, after proper notice, at which testimony and evidence were received in support of the petition. The record was held open for the receipt of supplemental submissions by the Petitioner and Technical Staff and closed on December 22, 2003.

## **II. FINDINGS OF FACT**

For the convenience of the reader, the findings of fact are grouped by subject matter. Where there are conflicts in the evidence, they are resolved under the preponderance of evidence test.

### ***A. Subject Property and Neighborhood***

The subject property consists of approximately one acre of land located at 14200 Clopper Road in Boyds, in the northwest quadrant of the intersection of Clopper Road and Richter Farm Road. It is classified under the R-200 Zone. The property is currently developed with a one-and-a-half-story house containing almost 3,000 square feet of space; a detached three-bay garage containing approximately 1,800 square feet; a U-shaped, paved driveway that passes in front of the house and has two access points onto Clopper Road; and a gravel driveway leading from the westernmost curb cut to the garage. The property is mostly flat, with a slight downhill slant in the northwest corner, which is below the grade of the adjacent roadway (Clopper Road). The property is

landscaped with grass, ornamental trees and shrubs. There are a number of significant trees on or adjacent to the property, but no forest or other sensitive environmental resources. See Natural Resources Inventory/Forest Stand Delineation, Ex. 49(a). The general location of the subject property may be seen on the vicinity map below.

**Vicinity Map, Excerpted from Ex. 4(a)**

The subject property is bordered on the northeast by Clopper Road, on the east by an undeveloped parcel, on the south by a forest conservation area for the Hoyles Mill Village subdivision further south, and on the west by a small area of undeveloped land that is classified under the R-90 Zone and bordered by Richter Farm Road. The Leaman Park single-family detached residential subdivision, developed under the R-90 and R-60 Zones, confronts the subject property across Clopper Road, with the backs of the lots facing Clopper Road and buffered by trees.

The general neighborhood for purposes of evaluating a special exception should include the geographic area that is within sight of the subject property or reasonably could be expected to be affected by the proposed use. Technical Staff suggested that the relevant neighborhood in this case extends from Eternity Road north of the site east to Hopkins Road, then south to Clopper Road, east to Schaeffer Road, south to Leaman Farm Road and west to Richter Farm Road, which curves around the subject property to connect with Eternity Road. The



neighborhood as thus defined has a mushroom-like shape, with a domed cap formed by the curve of Richter Farm and Eternity Roads and a long stem pointing east. Staff explained that they could not identify any other logical borders that would not bisect residential areas or natural conservation preserves. The neighborhood includes all of the contiguous and confronting land and encircling roadways. Moreover, the “stem” of the mushroom is all part of one drainage area and one contiguous green and/or forested area that could be affected by the proposed use. The neighborhood is shown on the map reproduced below.

**General Neighborhood of the Subject Property, Excerpted from Ex. 54**

The general neighborhood of the subject property contains low-density, single-family detached residences, conservation areas and a farmstead. The residential neighborhood confronting the property to the north is screened from Clopper Road and the subject property by a row of trees. Property beyond the forest conservation area south and east of the site contains single-family housing and a farmstead.

### ***B. Proposed Use***

Since 1987 the Petitioner, Dr. Dale Rubenstein, has operated a cats-only veterinary hospital under the name "A Cat Clinic," which is currently located in a shopping center a short distance from the subject property, on Clopper Road in Germantown. During that time she has never received a notice of violation from Montgomery County or any complaint from the landlord or neighbors. She proposes to move her clinic to the subject property and convert the existing house for that purpose. To provide adequate space, the Petitioner proposes to add approximately 1,200 square feet of space in the rear, with an addition extending out 18 feet from the current rear foundation and approximately 70 feet along the rear wall. The addition would not be visible from the front. It would have a flat roof for the most part, with a section of pitched roof similar to that planned for the new front portico. In addition, the Petitioner proposes other exterior changes: a portico over the front doorway; a railing and gate along the exterior staircase to the lower level; a ramp to provide handicapped access; a decorative trellis and railing for visual appeal; siding on the entire building for a consistent look; replacement asphalt shingles on the roof; and a second entrance along the front façade, between the two windows that face onto the proposed ramp. The second entrance would lead to an area right next to an exam room, and could be used by a client with a very sick cat or one facing euthanasia, who would not want to go through the reception area accessed by the main entrance.

The Petitioner proposes to construct a new paved parking area between the house and the existing garage, with 11 parking spaces. The portion of the circular drive closest to the front of the clinic, at the widest point in the driveway, is to be used as a drop-off space. See Supplemental Staff Reports, Exs. 54 and 55. In addition, three overflow parking spaces for staff only would be

designated in the gravel area in front of the garage, although the garage itself would not be used for any purpose related to the special exception. An existing gravel parking area northeast of the main building (which would violate applicable parking area setbacks) would be removed.<sup>1</sup>

The photograph below shows the front of the house and part of the circular drive. The next page presents photographs of (a) the west end of the house where the handicapped ramp and new door would be built, and (b) the area proposed for the paved parking lot, between the west end of the house and the east end of the garage, behind the two large trees. The proposed site plan is on the page 10, followed by elevations on page 11 showing the proposed addition and renovations.

**Front of House, Exhibit 8(a)**

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<sup>1</sup> Technical Staff stated in its Nov. 7 memo, Exhibit 54, that the Petitioner had agreed to remove this gravel parking area but had not shown the removal on the site plan. The designated "to be removed" was added at the Hearing Examiner's request.

**West End of House (ramp location), Exhibit 8(f)**

**Proposed Parking Lot Area (behind two large trees), Exhibit 8(d)**

**Site Plan, Exhibit 58(a)**

**Elevations, Exhibit 41(d)**

As noted, the clinic would serve only cats. Accordingly, there would be no need for outdoor runs or exercise space, no barking or other noises associated with dogs and the mix of animals typically found at veterinary hospitals, and no risk of large and/or potentially dangerous or intimidating animals getting loose on the property. Almost all cat owners bring their cats to a veterinarian in a pet carrier or a blanket. The Petitioner testified that about once a year someone tries to walk their cat into the clinic on a leash, but normally they end up picking it up anyway.

The front entrance would open into a reception area/waiting room with seating for six people, considerable floor area to separate patients, and a small retail sales area with products including collars, combs and prescription cat foods that are not sold in pet stores or other retail outlets. The main floor of the building would also contain three patient examining rooms, a treatment area, laboratory/pharmacy space, a surgery room with pre- and post-operative facilities, a partially screened x-ray area, an isolation ward and a general ward to hold cats between treatments or during recovery or observation, office space, an employee break room, and restrooms. The basement of the building would contain offices, storage space, mechanical and laundry rooms and a break room.

The clinic would be open from 7:00 a.m. to 8:00 p.m. Monday through Friday and from 8:00 a.m. to 2:00 p.m. on Saturdays. The clinic generally has one veterinarian on site at a time, with three other staff members including a receptionist and a technician assistant. Sometimes there is overlap during the middle of the day, so there could be as many as seven staff members on site at one time, including veterinarians. Veterinary services are provided by advance appointment only, except for emergencies. In general the clinic schedules two appointments per hour, with additional appointments for brief needs such as booster shots that do not require patient examination. Surgery patients normally are admitted between 8:00 and 9:00 a.m. and picked up between 4:00 p.m. and 7:00 p.m.

A Cat Clinic would operate at the site primarily on an outpatient basis. Cats would be kept at the hospital overnight if illness, injury or post-surgical treatment required intensive care. Commercial boarding would not be provided. The Petitioner agreed to a condition limiting the number of cats on site at any one time to twenty, including both hospitalized and outpatient animals.

Because of medical advances in controlling flea and tick infestations, A Cat Clinic no longer regularly bathes or dips its patients. This greatly reduces water usage and avoids the use and disposal of insecticides. In general, roughly one to two patients per month require bathing. Trash is removed by a commercial contractor, with animal and medical wastes and deceased animals stored in a lawful manner until removed by appropriate specialized contractors.

### ***C. Master Plan***

The subject property is in the area covered by the *1989 Approved and Adopted Germantown Master Plan* (the “Master Plan”), which is silent on the use of the subject property. The subject property is included in the KI-2 section of the Kingsview Village Analysis Area, which is recommended to retain its existing R-200 zoning. The R-200 Zone permits veterinary hospitals by special exception.

### ***D. Parking and Landscaping***

The Zoning Ordinance states that in considering a proposed veterinary hospital special exception, the Board of Appeals must evaluate the amount of parking necessary considering the number of employees on the largest shift, the number doctors practicing simultaneously and the number of appointments and deliveries. Code § 59-G-2.32(9). The minimum number of spaces for a veterinary hospital is five. *Id.*

In this case, the testimony and written evidence establish that in general, the proposed clinic would have one doctor and three other staff on site, and four to five clients could be there at one time (or as many as eight, counting clients who come to pick up prescription cat food on a Saturday). Overlapping shifts could result in as many as seven staff members on site for short periods of time. The Petitioner estimated that at the busiest time, typically a Saturday, when customers come to pick up animals and food, they could have as many as four staff people and eight clients on site at one time. A Cat Clinic also holds staff meetings from time to time, which may be attended by as many as ten people. These, however, are normally conducted at times when no patient appointments are



scheduled. The Petitioner agreed to limit deliveries to ten per week, with only two per week in trucks larger than those that typically deliver to residences.

The Petitioner proposes to construct a new, paved parking area with eleven parking spaces immediately west of the clinic building. Three additional overflow spaces would be designated for staff only in the gravel area in front of the detached garage. In addition, space is available in the entrance drive in front of the building for momentary drop-off parking. Technical Staff opined that this combination of parking and drop-off space would meet the needs of the proposed staffing and clientele.<sup>2</sup> See Supplemental Staff Report, Ex. 54, at 2-3. Staff recommended that signage be used to restrict the driveway to one-way traffic flow, with traffic entering from the westernmost access point, turning either right towards the parking areas or left towards the drop-off area, and proceeding around the circular drive to exit from the easternmost access point. Although this recommendation was made after the hearing and therefore was not discussed at the hearing, the Hearing Examiner recommends that such a condition be imposed if the special exception is granted.

As noted, the subject property contains some existing trees and landscaping. The only additional landscaping proposed by the Petitioner is a staggered row of white pine trees parallel to the new parking area, to screen the view of the parking area from the road. Technical Staff found the proposed landscaping acceptable. See Staff Report, Ex. 47, at 5-6.

### ***E. Lighting and Signage***

The Petitioner proposes two exterior lights at the front entrance to the clinic building, which apparently would be mounted underneath the portico. She proposes a wall-mounted security light at each of the front corners of the building, and a third wall-mounted security light at the rear entrance to the building. Submitted lighting specifications indicate that these wall-mounted lights would be full-cut-off fixtures. See Ex. 58(b). Finally, the petitioner proposes to light the new paved

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<sup>2</sup> Technical Staff initially stated that the drop-off space in front of the clinic building would be within the 40-foot setback required for a parking facility, and therefore would require a waiver. See Ex. 54 at 1-2. Subsequently, however, Staff revised that opinion by stating that the use of driveway space for momentary drop-offs would not constitute a "parking facility" and therefore would not be subject to the associated setback requirements. See Ex. 55.

parking area with eight bollard-types lights that would stand 42 inches high. The Petitioner did not submit precise information into the record concerning the wattages of the various lights proposed, nor did she submit a photometric plan showing an estimate in foot-candles of the lighting proposed for the property. The Staff Report states that the submitted lighting plan shows security lighting near the property's frontage with Clopper Road not exceeding 0.1 foot candles. See Ex. 47 at 6. However, no such lighting plan was submitted to the Hearing Examiner; nothing submitted in this record shows foot candle measurements anywhere on the property. The evidence does indicate that the parking lot lights would be limited to bollard lighting, which tends to cast a limited amount of light, at waist-height. Moreover, the parking lot lights would be screened from Clopper Road by the new evergreen trees Dr. Rubenstein plans to plant. The security lighting on the building would not be screened, but it would be limited to fixtures whose light source would not be visible except immediately under the fixture. In addition, the building sits approximately 55 feet from the front property line and nearly 90 feet from Clopper Road. The nearest residentially developed property is on the other side of Clopper Road, and is screened by mature vegetation. Accordingly, the Hearing Examiner is willing to accept Technical Staff's conclusion that the proposed exterior lighting would not create objectionable glare or illumination on adjacent residential areas.

The Petitioner proposes to erect an identification sign at the maximum height of 60 inches above grade. She intends to seek a variance to permit the sign to be illuminated on both sides. See sign detail drawing, Exhibit 39(f); Ex. 58. The sign would be located between the two curb cuts for the driveway entrance and exit, as seen on the site plan. Technical Staff opined that the request for illumination is reasonable in view of the speed of vehicular traffic on Clopper Road, and the fact that clients would be arriving at the site in the dark during a number of months. Although insufficient information was provided to the Hearing Examiner to determine the footcandles of illumination that the sign lights would generate, Technical Staff opined that the sign lighting would create less than 0.1 footcandles of light at the property line and would not intrude on nearby residential properties. The Petitioner agreed to a condition suggested by the Hearing Examiner that

the sign lighting be turned off at 10:00 p.m. each night. She also agreed to submit a copy of the approved sign to the Board of Appeals, whether or not she gets approval for the illumination.

#### ***F. Utilities, Stormwater Management and Environmental***

The subject property is served by public water and sewer and other utilities used by the existing residential use.<sup>3</sup>

Environmental Planning Staff at M-NCPPC recommended approval of the proposed special exception on condition that the Petitioner implement a Tree Save Plan to protect four significant trees on the site. See Attachment 2 to Staff Report; Specimen Tree Protection Report, Ex. 39(e). The Petitioner has agreed to do so, and her testimony indicated that she fully understands what the plan requires. Environmental Staff also recommended requiring a tree safety inspection during construction, and compliance with county stormwater management and sediment control regulations. The proposed special exception is exempt from forest conservation requirements because it would result in total disturbance of less than 10,000 square feet and forest clearing of less than 5,000 square feet. See Attachment 2 to Staff Report.

The subject property is not located within a special protection area, and the limits of disturbance would not extend into any streams or stream valley buffers. Technical Staff found that the proposal would be consistent with the imperviousness standards for the relevant watershed. See Ex. 54 at 3-4.

#### ***G. Traffic and Circulation***

Technical Staff estimates that the proposed cat clinic would generate 23 vehicle trips during the weekday morning peak hour and 20 trips during the weekday evening peak hour. Accordingly, the Petitioner was not required to prepare a Local Area Transportation Review ("LATR") study. The subject property is located in the Germantown West Policy Area, which has sufficient

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<sup>3</sup> The Petitioner's original statement in support stated that the property used a septic system, but this error was corrected in a later submission. See, Exs. 3(a), 39.

employment capacity to accommodate the proposed use under the Annual Growth Policy (“AGP”) as currently in effect. Transportation Planning Staff concluded that the proposed use would have no adverse effect on area roadways or on pedestrian safety, and that the site access and internal pedestrian and vehicular circulation shown on the site plan would be adequate.

#### ***H. Development Standards***

The preponderance of the evidence indicates that, as described on page 4 of the Technical Staff report, the proposed special exception would satisfy applicable development standards of the R-200 Zone, including building height and setbacks.

#### ***I. Noise***

One of the specific conditions for a veterinary hospital special exception requires that interior sound be reduced to 40 dBa, as measured at a distance of ten feet from the structure. Code § 59-G-2.32(b)(3). In addition, sound at the nearest receiving property line may not exceed 60 dBa during the day and 50 dBa at night. Code § 59-G-2.32(b)(6). An acoustical survey conducted at A Cat Clinic’s current location indicated that the noise level in the cat holding area/procedure room was 48 dBa. See Ex. 10. The Petitioner’s noise consultant stated that with noise levels that low, any type of construction would result in interior noise of less than 40 dBa as measure ten feet from the structure. *Id.* In addition, because the interior noise levels are lower than the daytime and nighttime maximum permitted and no exterior animal runs or holding areas are planned, the noise levels at the property lines would also comply with Code requirements. *Id.*

#### ***J. Community Participation***

The record includes numerous letters in support of the proposed special exception from Dr. Rubenstein’s clients. See Exhibits 14(a) through (k), 21-33, 35-37, 43-46, 48 and 51-52. The letters attest to the high quality of veterinary care provided by Dr. Rubenstein and her staff and the resulting loyalty of their clients. Many of the letters state that the proposed clinic would be an asset to the neighborhood and would not disturb nearby residents because of the professionalism,

cleanliness and care exhibited by Dr. Rubenstein and her staff, and because the clinic would treat only cats, which do not bark or require outdoor exercise. Dr. Rubenstein's clients clearly would be glad to bring their cats to a clinic in a quiet residential setting instead of a noisy, crowded shopping center with difficult parking conditions. One writer stated that if the proposed site were right next to her home, she would have no qualms about welcoming them. See Ex. 14(j).

Two of the letters in support were written by close neighbors of the subject property, and two by residents of the same general area. Barbara Paul wrote that her house backs onto Clopper Road, directly across Richter Farm Road from the subject property. See Ex. 21. She has lived at that location for five years, and complains that the current owners of the subject property use the garage for vehicle repair, resulting in revving engines, music and banging noises at all hours of the day. She feels that a veterinary clinic would be a welcome change for the property. Richard and Phyllis Peterson live one block from the subject property on Shooting Star Court, and state that the subject property and its array of vehicles have been an eyesore. See Ex. 32. They would much prefer to have Dr. Rubenstein's clinic at that location. Brenda Johnson lives close to the property (less than half a mile) and states that she "would not support just any business moving to this location" but would welcome the proposed clinic because it is a professional establishment, would not disrupt the neighborhood and would not pose a noise or traffic problem. See Ex. 14(i). Stanley Oldroyd and Michelle Poage-Oldroyd live on Clopper Road within half a mile of the subject property and believe that Dr. Rubenstein and her staff are extremely professional and considerate of both their clients and their neighbors. See Ex. 52.

One area resident wrote in opposition to the proposed special exception and one wrote about traffic concerns. Donald R. Larson lives near the intersection of Richter Farm Road and Clopper Road and believes that the neighborhood is and should remain residential. He objects to "any change, even incremental, away from residential, it would be out of character with the existing, established land use." Ex. 38. The Hearing Examiner notes that under the Zoning Ordinance, a veterinary hospital is considered to be an acceptable use in the R-200 Zone and many other residential zones, provided that certain conditions are satisfied, as discussed in Part IV below.

Deborah Zucker, a Boyds resident, urges that approval of the proposed clinic be contingent on establishing a separate left-turn lane into the clinic for westbound traffic by extending a left-turn lane that was created in a recent road widening. See Ex. 53. Ms. Zucker suggests that a separate right-turn lane into the clinic for eastbound traffic would also be useful. The evidence gives no indication that such measures are necessary.

### **III. SUMMARY OF TESTIMONY**

#### ***A. Applicant's Case***

1. Lawrence J. Skok, Counsel

Mr. Skok testified, as a fact witness, concerning the Applicant's background and the nature of her veterinary practice. He stated that Dr. Rubenstein is a longtime resident of Montgomery County. She graduated from high school in the County, obtained undergraduate, masters and doctoral degrees elsewhere, and returned to Montgomery County to practice veterinary medicine. Dr. Rubenstein opened her own practice in 1985, which is devoted exclusively to the care of cats. Since 1986 she has operated a veterinary hospital at 13507 Clopper Road in Germantown, a short distance from the subject property, pursuant to a grant of special exception. During her 17 years at that location, which is in a shopping center, she has not received either notices of violation from the County or complaints from the landlord or neighbors.

Mr. Skok stated that a cats-only veterinary clinic has numerous advantages over a mixed veterinary practice, from a land use perspective, because many of the specific conditions that the Zoning Ordinance applies to a veterinary hospital were designed to address potential adverse effects from barking and outside exercise areas, neither of which are issues at a cats-only clinic. Cats do not bark, nor do they need outdoor exercise areas or runs. In addition, cats and dogs sometimes fight at a mixed veterinary practice, and dogs sometimes get loose when being brought into a clinic. Cats generally arrive in a cat carrier or in someone's arms.

Dr. Rubenstein does not take cats for commercial boarding, although cats do stay at the clinic overnight for medical reasons such as recovery from surgery.

Mr. Skok stated that the Petitioner had worked with Technical Staff to put together a parking area that balanced the competing considerations of providing adequate parking and minimizing new impervious surfaces. In particular, Environmental Planning Staff wanted to protect the critical root zones of two significant trees located in the front portion of the property. Technical Staff believe there should be a minimum of eight parking spaces, and the Petitioner has proposed a parking lot with eleven spaces. In addition, the circular drive that passes in front of the main building is wide enough to serve as a drop-off area for animals being brought in.

Mr. Skok testified that the subject property is currently run-down. One of the owners works on cars, so there are junked cars parked on the premises. Dr. Rubenstein would clean up the site and add landscaping to screen the parking area.

The existing house is a 1960s brick rambler with a little bit of brick veneer and the remainder covered in siding. Dr. Rubenstein proposes minor changes to the front of the house: a small addition to the roof to provide a sheltered area over the stoop, a ramp to provide handicapped access, a decorative trellis and railing for visual appeal, siding on the entire building for a consistent look, and the addition of a second entrance along the front façade, between the two windows that face onto the proposed ramp.

2. Dale A. Rubenstein, DVM

Dr. Rubenstein described how her clinic operates and would continue to operate at the new location. The clinic generally has one veterinarian on the site at a time, with three other staff members including a receptionist and a technician assistant. Sometimes there is some overlap during the middle of the day, so there could be as many as seven staff members and veterinarians on site at one time. In general they schedule two appointments per hour, although they may add additional appointments for brief needs such as booster shots. She estimated that at the busiest time, typically a Saturday, when customers come to pick up animals and food, they could have as many as four staff people and eight clients on site at one time. She anticipates that they would not often have more than ten people, and indicated that she expects they would use the driveway for overflow parking at those times.

Dr. Rubenstein confirmed her attorney's testimony that there is room in the circular drive for one car to pass if another car is stopped in front of the house; she stated that she has seen the current owners of the house use the drive in that fashion.

With regard to cats staying at the clinic overnight, Dr. Rubenstein testified that for most routine surgeries, cats are there only during the day. Following more complicated procedures, cats in stable condition stay overnight for one or two nights or as much as a week. Cats in critical condition need to be where they can be observed overnight, so they send many people to a referral hospital in Gaithersburg that has an emergency clinic. Dr. Rubenstein could have as many as 20 cats on site overnight, although she does not think she has ever had that many.

Dr. Rubenstein noted that the second doorway proposed at the front of the house would lead to an area right next to an exam room, which could be used by a client with a very sick cat or a euthanasia who would not want to go through the reception area (the main entrance would lead into a reception area/waiting room).

Dr. Rubenstein stated that she is willing to comply with all of the conditions recommended in the Staff Report. She is aware that at the time of preliminary plan approval, she would be required to dedicate land or an easement for the Clopper Road right-of-way recommended in the Master Plan. She affirmed that the existing garage on the property would not be used for any purpose related to the veterinary clinic. She stated that she currently keeps a written log of all client and patient visits and would continue to do so at the new location. Dr. Rubenstein is very familiar with the requirements of a tree save plan, having spent a great deal of time discussing the need to protect the two significant trees on the subject property, and fully intends to comply.

Dr. Rubenstein agreed to accept several additional conditions proposed by the People's Counsel, Martin Klauber: (1) no more than ten staff members, including veterinarians, may be on site at any one time, and no more than eight staff members, including veterinarians, may be on site during any time period when client appointments are scheduled; (2) no more than 20 cats may be on the premises at any one time; (3) no more than five client appointments will be held per hour; (4) no more than eight surgeries will be performed on site in any one day; (5) no more than ten deliveries



per week; and (6) no more than two deliveries per week involving trucks that are larger than those that normally deliver to residences.

Dr. Rubenstein testified that exterior lights are planned for security purposes, and would be on until 10:00 p.m., after which they would be controlled by motion sensors. She pointed out that with all the trees on site and in the area, and the berm across Clopper Road, the lights would not intrude on the front of anyone's house. She agreed to also turn off the lighting on the proposed sign from 10:00 p.m. until 6:00 a.m.

### ***B. People's Counsel***

The People's Counsel, Martin Klauber, presented a closing statement voicing support for the Petition and noting that Dr. Rubenstein consented to every condition that he or the Hearing Examiner proposed.

## **IV. CONCLUSIONS**

A special exception is a zoning device that authorizes certain uses provided that pre-set legislative standards are met. Pre-set legislative standards are both specific and general. The special exception is also evaluated in a site-specific context because there may be locations where it is not appropriate. Based on the testimony and evidence of record, I conclude that the proposed veterinary hospital special exception would satisfy all of the specific and general requirements for the use.

### ***A. Inherent and Non-inherent Adverse Effects***

The standard for evaluation prescribed in Code § 59-G-1.21 requires consideration of the inherent and non-inherent adverse effects of the proposed use, at the proposed location, on nearby properties and the general neighborhood. Inherent adverse effects are "the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations." Code § 59-G-1.21. Inherent adverse effects, alone, are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are "physical and operational

characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site.” *Id.* Non-inherent adverse effects, alone or in conjunction with inherent effects, are a sufficient basis to deny a special exception.

Technical Staff have identified seven characteristics to consider in analyzing inherent and non-inherent effects: size, scale, scope, light, noise, traffic and environment. For the instant case, analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with a veterinary hospital. Characteristics of the proposed use that are consistent with the characteristics thus identified will be considered inherent adverse effects. Physical and operational characteristics of the proposed use that are not consistent with the characteristics thus identified, as well as adverse effects created by unusual site conditions, will be considered non-inherent adverse effects. The inherent and non-inherent effects thus identified must be analyzed to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

The following may be considered inherent characteristics of a veterinary hospital: a structure of sufficient size and scale to house the operation; impervious surfaces and some amount of exterior lighting related to parking and drive aisles; exterior and interior noise from animals and people; additional traffic on area roadways created by client and employees trips and deliveries; and potential pollution and/or smells associated with the disposal of wastes.

Technical Staff opined that A Cat Clinic, as proposed on the subject property, would not have any physical or operational characteristics that are not consistent with the inherent adverse effects of a veterinary hospital, except that the clinic would treat only cats and therefore would not have outdoor runs or exercise areas. This distinction reduces the potential for noise, or other nuisances such as runaway dogs, that are typical for traditional veterinary hospitals. The proposed use would involve expansion and renovation of an existing building, plus additional impervious surface for a paved parking area. The Hearing Examiner agrees with staff’s conclusions, except that in the undersigned’s view, an illuminated sign is not an inherent characteristic of a veterinary hospital. Nonetheless, the Hearing Examiner is persuaded by Technical Staff’s reasoning that the request for

illumination is acceptable, in light of the speed of vehicular travel on Clopper Road and the fact that clients would be coming to the clinic in the dark for several months out of the year. Moreover, the Petitioner's willingness to turn the sign illumination off from 10:00 p.m. to 6:00 a.m. every day and the fact that the residential neighborhood confronting the subject property across Clopper Road is screened by trees contribute to minimizing the possibility of adverse impacts. No unusual site conditions have been identified that might create non-inherent adverse effects.

Based on the preponderance of the evidence, the Hearing Examiner concludes that the proposed feline veterinary clinic would have no non-inherent or inherent adverse effects that warrant denial of the petition.

### ***B. Specific Standards***

The specific standards for a veterinary hospital are found in Code § 59-G-2.32. Based on the preponderance of the evidence, the Hearing Examiner concludes that the proposed use would be consistent with each of these standards, as outlined below.

#### **Section 59-G-2.32. Veterinary Hospitals.**

- (a) In any commercial, central business district or transit station zone where permitted by special exception, a veterinary hospital must comply with the following conditions and requirements:
  - (1) There shall be no runs, exercise yards, or other facilities for the keeping of animals in any exterior space.
  - (2) All areas for the keeping of animals must be soundproofed.

Conclusion: Not applicable.

- (b) In any residential or rural zone where permitted by special exception, a veterinary hospital must comply with the following conditions and requirements:
  - (1) In the R-150, R-90, and R-60 zone, the maximum lot size is one-half acre. In the R-60 zone a veterinary hospital must be located along a major highway with an existing right-of-way width of no less than 90 feet, and be adjacent to or confronting a central business district or a property zoned for commercial use.

Conclusion: Not applicable

- (2) Exterior areas used to exercise, walk, or keep animals must be set back from any property line 200 feet and screened from adjacent residential

properties. All exterior exercise areas and runs must be fenced for the safe confinement of animals.

Conclusion: No exterior areas are to be used to exercise, walk or keep animals. Clinic patients would be outside only when being carried from the parking area to the clinic building. The sidewalk connecting the parking area and the building would be screened from view by trees and topography. The nearest residence is about 225 feet from the main building.

- (3) For all buildings in which animals will be present, maximum expected interior sound levels must be reduced to 40 dBA (A-weighted decibels) outside, measured at ten feet from the structure.

Conclusion: The evidence concerning an acoustical survey conducted at the current location of A Cat Clinic, together with testimony concerning the effects on noise of limiting a veterinary practice to cats, supports the conclusion that the interior sound levels at the proposed clinic would comply with this requirement.

- (4) All buildings and accessory structures must be set back from any property line a minimum of 50 feet.

Conclusion: The proposed clinic building (the existing house) satisfies this requirement. The separate three-car garage is located about seven feet from the rear property line and about 40 feet from the property line adjoining Richter Farm Road. However, the Petitioner has agreed to a condition that the garage may not be used for any purpose associated with the special exception. With this condition, the proposed use would satisfy this requirement.

- (5) No animal may be outdoors between 6 p.m. and 8 a.m.

Conclusion: The only animals outdoors at any time would be cats being transported between the clinic and the parking lot.

- (6) On weekdays, the sound at the nearest receiving property line must not exceed 60 dBA between the hours of 8 a.m. to 6 p.m. and 50 dBA between the hours of 6 p.m. to 8 a.m. On Saturdays, Sundays, and federal holidays, the sound at the nearest receiving property line must not exceed 60 dBA between the hours of 9 a.m. to 6 p.m. and 50 dBA between 6 p.m. and 9 a.m. Terms are defined in accordance with the Montgomery County Noise Ordinance (Chapter 31B of the Montgomery

County Code). In any event, the predicted maximum receiving property line sound levels must not exceed the characteristic ambient sound levels by more than 3 dBA at any time.

Conclusion: The evidence concerning an acoustical survey conducted at the current location of A Cat Clinic, together with testimony concerning the effects on noise of limiting a veterinary practice to cats, supports the conclusion that the sound levels at the proposed clinic would comply with these requirements.

- (7) Dogs must not be walked or exercised in outdoor areas that are off-site.

Conclusion: The facility would provide care only to cats, who would not be walked or exercised outdoors.

- (8) In addition to the submittal requirements in Sec. 59-A-4.22, the applicant must submit the following information. Applications submitted without this information are incomplete and will not be accepted or assigned a case number:

- (i) acoustical engineering studies that demonstrate that the proposed use meets the standards in Sec. 59-G-2.02(b)(3) and (6) above. The studies must show the worst scenario sound level. The statement of operations must be sufficiently detailed to allow determination of how often the worst scenario sound level occurs.

Conclusion: As noted, the Petitioner submitted an acoustical engineering study that demonstrates compliance with the enumerated standards. The statement of operations and testimony are sufficiently detailed to allow a meaningful assessment of noise impacts; they demonstrate that the proposed cats-only clinic would not be a significant noise generator.

- (ii) detailed floor plans that show all the interior areas and their use designations,

Conclusion: See Exhibit 39(a) for main floor plan (superceding Exhibit 4(d)) and Figure 8 of Staff Report for lower level floor plan.

- (iii) site plans that show the layout of all exterior areas used to exercise, walk, or keep animals.

Conclusion: No exterior areas are to be used to exercise, walk or keep animals.

- (9) The Board must specify a minimum number of off-street parking spaces, taking into consideration the number of employees on the maximum shift, the number of doctors practicing simultaneously, and the number of appointments and deliveries. This number must in no case be less than 5.

Conclusion: As discussed in detail in Part II.D. above, the Hearing Examiner agrees with Technical Staff's conclusion that the proposed parking plan, with 11 paved spaces, three gravel overflow spaces for staff, and a drop-off area in front of the clinic building, would be adequate to provide for staff, veterinarians, clients and deliveries.

- (10) The Board may regulate the number of animals that may be boarded, exercised, walked, or kept in runs or similar areas, and the manner in which animals are boarded, exercised, walked, or kept.

Conclusion: The Petitioner has agreed to a condition limiting the maximum number of cats on site at one time to twenty. Other recommended operational conditions are listed at the conclusion of this report.

- (11) The Board may regulate the office hours and the number of appointments. Animals may be seen by appointment only. Emergency patients and visits to pick up prescriptions and pet-related items may also occur, within office hours only and without prior scheduling: abuse of this exemption may lead to revocation of the special exception. A written log of all appointments and drop-in and emergency client activities must be kept, to be available for inspection by County authorities.

Conclusion: The proposed conditions include limitations on hours of operation and the number of appointments. They also require that animals be seen by appointment only except in case of emergency, and require the Petitioner to keep a written log.<sup>4</sup>

- (12) Any accessory operation, such as grooming or the sale of pet food and supplies, must be set forth in the statement of operations and must be limited as an accessory activity to a percentage of sales not to exceed 20%.

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<sup>4</sup> Technical Staff recommended that animals be seen by appointment only without specifying an exception for emergencies. Dr. Rubenstein mentioned in her testimony that a cat might occasionally be treated on an emergency basis, although in general emergencies are referred to an emergency clinic. The recommended condition has been revised to track more closely the language of the Zoning Ordinance and the Petitioner's testimony.

Conclusion: The only accessory operation proposed in this case is a minor amount of retail sales of cat-related products, principally consisting of prescription cat foods. The Petitioner has agreed to limit retail sales to 4% of the floor space of the clinic, and such sales are expected to represent less than 10% of the clinic's gross income.

- (13) All litter and animal waste must be contained and controlled on the site.

Conclusion: Trash is to be removed by a commercial contractor. Animal and medical wastes and deceased animals are to be stored in a lawful manner until removed by appropriate specialized contractors.

- (14) Animals may be kept overnight at the hospital only for medical purposes. If animals are kept for non-medical purposes, a separate application for an animal boarding place must be approved.

Conclusion: No animal boarding is proposed. Cats will be kept overnight for medical purposes only.

- (15) If the proposed use is located in an area that uses well water and septic facilities, the applicant must prove that the use will not have any negative effect.

Conclusion: The subject property is served by public water and sewer.

- (c) Any veterinary hospital lawfully existing prior to the effective date of this ordinance is a conforming use, and may be extended, enlarged or modified by special exception subject to the provisions set forth in this section.

Conclusion: Not applicable.

### **C. General Standards**

The general standards for a special exception are found in Section 59-G-1.21(a). Based on the preponderance of the evidence, the Hearing Examiner concludes that the proposed use would be consistent with these standards, as outlined below.

**Sec. 59-G-1.21. General conditions:**

- (a) A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:

- (1) Is a permissible special exception in the zone.

Conclusion: A veterinary hospital is a permitted use in the R-200 Zone.

- (2) Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.

Conclusion: The proposed use would comply with each of the standards and requirements set forth for the use in Code §59-G-2.32, as detailed in Part IV.B. above.

- (3) Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the commission. Any decision to grant or deny special exception must be consistent with any recommendation in an approved and adopted master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.

Conclusion: The Hearing Examiner is in agreement with Technical Staff's conclusion that the proposed special exception would be consistent with the *1989 Germantown Master Plan*. The Master Plan recommended continued R-200 zoning for the planning area that includes the subject property, and a veterinary hospital is a permitted special exception in the R-200 Zone.

- (4) Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses.

Conclusion: The Hearing Examiner is in agreement with Technical Staff's conclusion that the proposed special exception would be in harmony with the general character of the neighborhood. The proposed clinic would have no effect on population density; the design, scale and bulk of the



proposed addition to the main building would be in keeping with the character of the neighborhood; the subject property would have adequate on-site parking for the use; and the fairly modest intensity and character of activity and traffic that the use would generate would be in harmony with the general character of the neighborhood, considering other existing uses in the area.

- (5) Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

Conclusion: The evidence supports the conclusion that due to the type of activity involved and adequate screening and buffering, the proposed special exception would not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site.

- (6) Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

Conclusion: The evidence supports the conclusion that the proposed special exception would cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site. The submitted noise study and testimony demonstrate that county noise standards would be met. No outdoor exercise areas that might create odors or dust are proposed. The proposed security lighting is limited in nature and involves only bollard lighting, full cut-off wall fixtures and ceiling-mounted fixtures. The proposed signage lighting, if approved by the Sign Review Board, will not produce off-site glare due to its low illumination level.

- (7) Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.

Conclusion: The proposed special exception would be consistent with the applicable Master Plan. Moreover, the evidence supports the conclusion that it would not adversely affect the general neighborhood, which is a combination of residential and conservation uses.

- (8) Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

Conclusion: The evidence supports the conclusion that the proposed special exception would not adversely affect the general welfare of residents, visitors and workers in the area of the subject site.

- (9) Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.

Conclusion: The evidence supports the conclusion that the subject property, currently used for residential purposes, would continue to be served by adequate public facilities.

- (i) If the special exception use requires approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Planning Board at the time of subdivision review. In that case, subdivision approval must be included as a condition of granting the special exception. If the special exception does not require approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Board of Appeals when the special exception is considered. The adequacy of public facilities review must include the Local Area Transportation Review and the Policy Area Transportation Review, as required in the applicable Annual Growth Policy.

Conclusion: Subdivision approval would be required before building permit approval, at which time the Petitioner would grant an easement for future dedication to provide for the Master Plan recommended right-of-way for Clopper Road. Moreover, the proposed special exception would not generate enough trips to require LATR, and would satisfy PATR based on available employment capacity.

- (ii) With regard to findings relating to public roads, the Board . . . must further determine that the proposal will have no detrimental effect on the safety of vehicular or pedestrian traffic.

Conclusion: The evidence supports the finding that the proposed use, with the one-way driveway signage recommended as a condition of approval, would have no detrimental effect on the safety of vehicular or pedestrian traffic.

- (b) Nothing in this Article relieves an applicant from complying with all requirements to obtain a building permit or any other approval required by law. The Board's finding of any facts regarding public facilities does not bind any other agency or department which approves or licenses the project.
- (c) The applicant for a special exception has the burden of proof to show that the proposed use satisfies all applicable general and specific standards under this Article. This burden includes the burden of going forward with the evidence, and the burden of persuasion on all questions of fact.

Conclusion: As discussed above, the Petitioner has met her burdens of proof and persuasion in this case.

## V. RECOMMENDATIONS

Accordingly, based on the foregoing findings and conclusions and a thorough review of the entire record, I recommend that Petition No. S-2586, which requests a special exception under the R-200 Zone to operate a veterinary hospital in an existing house located at 14200 Clopper Road in Boyds, Maryland, be **granted** with the following conditions:

- 18. The Petitioner shall be bound by all of her testimony and exhibits of record, and by the testimony and representations of counsel identified in this report, including the final site plan, Exhibit 58(a) .
- 19. The Petitioner must submit an application for subdivision review in connection with the proposed structural addition to the main building, in compliance with the requirements of Chapter 50 of the County Code.
- 20. The hours of operation for the veterinary clinic shall be from 7:00 a.m. to 8:00 p.m. Monday through Friday and 8:00 a.m. to 2:00 p.m. on Saturdays.
- 21. The practice is limited to cats, and cats must be seen by advance appointment only, except in case of emergency.
- 22. No animal boarding is permitted; cats may be kept overnight for medical purposes only.

23. The holder of the special exception must keep a written log of all appointments, drop-in visits for purchase of food or other minor activities, and emergency client visits, to be available for inspection by county authorities.
24. The sale of retail products may not occupy more than four percent of the clinic floor space.
25. The detached garage on the subject property must not be used for any purpose related to the veterinary clinic.
26. Signage must be installed to designate the driveway entrance for one-way traffic only, with vehicles to enter via the westernmost curb cut, travel either to the parking area or past the front entrance, and exit from the easternmost curb cut.
27. No more than 10 staff members, including veterinarians, may be on site at one time. During time periods when appointments are scheduled, the maximum number of staff on site at one time, including veterinarians, shall be eight.
28. No more than 20 cats may be on site at one time.
29. No more than five appointments shall be scheduled in any one-hour period, and no more than eight surgeries shall be scheduled per day.
30. No more than 10 deliveries shall be received per week, including no more than two deliveries from trucks larger than those that normally deliver to residential dwellings.
31. All security lighting must be turned off or on a motion sensor from 10:00 p.m. to 6:00 a.m.
32. The Petitioner must apply for a variance from the Sign Review Board for her proposed illuminated entrance sign, and must provide to the Board of Appeals a drawing of the final sign as approved.
33. Signage lighting, if approved by the Sign Review Board, must be turned off from 10:00 p.m. to 6:00 a.m.

34. The Petitioner must comply with the stormwater and sediment control regulations of the Montgomery County Department of Permitting Services.
35. The Petitioner must comply with the Tree Save Plan approved for the property, and must have at least one site inspection conducted during the construction process by a Maryland Licensed Tree Expert or ISA Certified Arborist, to observe tree health, insure that the protection area has not been violated, and confirm that the protection measures are in good repair.

Dated: December 24, 2003

Respectfully submitted,

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Françoise M. Carrier  
Hearing Examiner